

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

560-12-2-.62 Manufacturing Machinery and Equipment.

(1) Purpose. This rule explains the sales and use tax exemptions in O.C.G.A. §§ 48-8-3(34) and 48-8-3(34.3) for machinery and equipment necessary and integral to the manufacture of tangible personal property in a manufacturing plant, and for repair and replacement parts associated with such machinery and equipment.

(2) Definitions. For purposes of this rule, the following definitions and explanations of terms shall apply:

(a) "Consumable supplies" means tangible personal property other than machinery, equipment, and industrial materials, that is consumed or expended during the manufacture of tangible personal property. The term "consumable supplies" includes but is not limited to water treatment chemicals for use in, on, or in conjunction with machinery or equipment; electricity, natural or artificial gas, gasoline, fuel, or other energy commodities; and items that are readily disposable. The term "consumable supplies" excludes packaging supplies necessary and integral to the transport of work in process within or among manufacturing plants.

(b) "Equipment" means tangible personal property, other than machinery, industrial materials, and consumable supplies, which is necessary and integral to the manufacture of tangible personal property. The term "equipment" includes durable devices and

apparatuses that are generally designed for long-term continuous or repetitive use. Examples of equipment include, but are not limited to, hand tools, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices. Consumable supplies that are consumed or expended to operate, control, or power equipment, or any of its components, are not considered equipment. The term "equipment" excludes real property.

(c) "Fixtures" means tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. Fixtures are classified as real property. Examples of fixtures include, but are not limited to, plumbing, lighting fixtures, slabs, and foundations.

(d) "Industrial materials" means materials that are purchased for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term "industrial materials" also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale. The term "industrial materials" includes "raw materials."

(e) "Machinery" means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term "machinery" includes a machine and all of its components including, but not limited to, belts, pulleys, shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational structures attached to the machine including stairways and catwalks, or other devices that are required to regulate or control the machine, allow access to the machine, or to enhance or alter its productivity or functionality.

Consumable supplies that are consumed or expended to operate, control, or power a machine or any of its components are not considered machinery. The term "machinery" excludes real property.

(f) "Machinery clothing" means felts, screen plates, or wires used to carry, form, or dry work in process through the manufacture of tangible personal property.

(g) "Manufacturing plant" means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.

(h) "Manufacture of tangible personal property," used synonymously with the term "manufacturing," means a manufacturing operation; series of continuous manufacturing operations, or series of integrated manufacturing operations, engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means, into articles of tangible personal property for sale or further manufacturing that have a different form, configuration, utility, composition, or character. Such term includes, but is not limited to, the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.

(i) "Manufacturer" means a person or business, or a location of a person or business that is engaged in the manufacture of tangible personal property for sale or further manufacturing.

1. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

(i) Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33; or specific North American Industrial Classification Systems codes 22111, or 511110; or

(ii) Generally regarded as being a manufacturer.

2. Businesses that are primarily engaged in providing personal or professional services, or in the operation of retail outlets, generally including, but not limited to, grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

(j) "Packaging operation" means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods, or suitable for the transport of work in process within or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area within a manufacturing plant.

(k) "Substantial purpose" is that purpose for which an item of tangible personal property is used more than one-third of the time of the total amount of time that the item is in use; alternatively, instead of time, the purpose may be measured in terms of other applicable criteria such as the number of items produced.

(l) "Real property" means land, any buildings thereon, and any fixtures attached thereto.

(m) "Repair or replacement part" means a part for new or existing machinery or equipment that is necessary and integral to

the manufacture of tangible personal property. Repair or replacement parts must be used to maintain, repair, restore, install, or upgrade such machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include, but are not limited to, oils, greases, hydraulic fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

(3) General Requirements: Machinery and Equipment Exemption.

(a) In order to qualify for the manufacturing machinery and equipment exemption in O.C.G.A. § 48-8-3(34), the appropriate certificate of exemption under this regulation must be obtained and provided to the supplier, and the property purchased or leased must:

1. Have the character of machinery or equipment at the time of sale or lease, or consist of components which, when assembled, will have the character of machinery or equipment;
2. Be used in a manufacturing plant; and
3. Be necessary and integral to the manufacture of tangible personal property for sale or further manufacturing.

(b) Further, in order for the machinery and equipment exemption to apply, the machinery or equipment purchased or leased must:

1. Be used for the first time in a new manufacturing plant in this state;
2. Be used for the first time in an existing manufacturing plant in this state; or

3. Replace or upgrade machinery or equipment in an existing manufacturing plant in this state.

(c) Any person making a sale or lease of machinery or equipment that is necessary and integral to the manufacture of tangible personal property for use in a new or existing manufacturing plant as new, additional, replacement, or upgraded machinery or equipment, must collect the tax imposed thereon pursuant to O.C.G.A. § 48-8-1 et seq., as amended, unless the purchaser or lessee furnishes the supplier with a properly completed Certificate of Exemption (Form ST-5M, Form ST-M2), or a direct pay permit.

(d) Where a Certificate of Exemption (Forms ST-5M or ST-M2), or direct pay permit has not been previously obtained and submitted, and tax is remitted on the purchase or lease of qualifying machinery or equipment, the purchaser or lessee may apply to the Commissioner for a refund of such tax.

(4) Application of Machinery and Equipment Exemption: Necessary and Integral. Machinery or equipment must be necessary and integral to the manufacture of tangible personal property in order to be eligible for exemption. Manufacturing processes can differ significantly from one manufacturing operation to another. Thus, when determining whether machinery or equipment is necessary and integral to the manufacture of tangible personal property, the Commissioner may evaluate the facts and circumstances of each case.

(a) Examples of machinery or equipment that generally will not qualify as necessary and integral to the manufacture of tangible personal property at any time include, but are not limited to:

1. Motor vehicles that are required to be registered for operation on public highways;

2. Power lines or transformers that bring electricity into a manufacturing plant;

3. Real property. Examples include, but are not limited to, concrete slabs and foundations, and structures or fixtures used for general manufacturing plant ventilation, heating, cooling, illumination, communications, plumbing, or the personal comfort and convenience of the manufacturer's employees;

4. Storage tanks, containers, racking systems, or other machinery or equipment used to handle, store, or distribute finished goods upon completion of the packaging operation unless exempted by another code section;

5. Administrative machinery or equipment including computers, related computer peripherals, servers, copiers, telephones, facsimile machines, office furniture, office furnishings, office supplies such as paper and pencils, and educational materials used for non-manufacturing functions including, but not limited to, sales, marketing, research and development, accounting and payroll, purchasing, finished goods inventory control, warehousing, and distribution;

6. Machinery or equipment that is not operated under the control of the manufacturer's employees or other persons under the manufacturer's direction and control. Customer self-service or vending machinery or equipment is not considered to be operated under the manufacturer's direction and control;

7. Machinery or equipment used in quarrying and mining for site preparation, including the removal and clearing of overburden; and

8. Living organisms of any kind, including but not limited to people, animals, and bacteria utilized in pollution control processes.

(b) Examples of machinery or equipment that generally will qualify as necessary and integral to the manufacture of tangible personal property include, but are not limited to:

1. Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging materials within or among manufacturing plants, or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include, but are not limited to, forklifts, conveyors, cranes, hoists, and pallet jacks;

2. Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

3. Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Specific examples may include, but are not limited to, boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

4. Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;

5. Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment, or between separate units of exempt machinery or equipment;

6. Machinery or equipment used to maintain, clean, or repair exempt machinery or equipment;

7. Machinery or equipment used to provide safety for the employees working at a manufacturing plant including, but not limited to, safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses, regardless of whether the items would otherwise be considered consumable supplies under Section 2(a) of this rule;

8. Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems; and

(i) Pollution control machinery or equipment that is necessary and integral to the manufacture of tangible personal property is not required to be certified by the Environmental Protection Division, Georgia Department of Natural Resources as being adequate and necessary for the purpose of eliminating or reducing air or water pollution.

9. Machinery or equipment used in quarrying and mining activities; including blasting, extraction, and crushing.

(c) For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property, and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial purpose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption. The Commissioner may consider any reasonable methodology for measuring the substantial purpose of machinery or equipment for which the substantial purpose is not readily identifiable.

(d) For leased machinery or equipment that did not qualify for an exemption under O.C.G.A. § 48-8-3(34) at the date of lease inception, but does qualify as necessary and integral to the

manufacture of tangible personal property effective January 1, 2009, the exemption provided by O.C.G.A. § 48-8-3(34) shall apply to all lease payments made subsequent to January 1, 2009.

(5) Application of Machinery and Equipment Exemption: Manufacture of Tangible Personal Property. The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant, and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment, regardless of whether the manufacture of tangible personal property occurs at one or more separate manufacturing plants.

(a) Examples of activities that are not considered the manufacture of tangible personal property:

1. Research and development activities;
2. Storage, general handling, and distribution of finished goods inventory; and
3. Any other activity that occurs prior to industrial materials being received at a manufacturing plant or after the completion of the packaging operation at a manufacturing plant.

(6) General and Specific Requirements: Repair and Replacement Parts.

(a) In order to qualify for the repair or replacement parts exemption in O.C.G.A. § 48-8-3(34.3), the property purchased must qualify as a repair or replacement part at the time of purchase or lease; the repair or replacement part must be used to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property; and the appropriate certificate of exemption under this rule must be obtained and provided to the supplier.

(b) Any person making a sale or lease of repair or replacement parts must collect the tax imposed thereon pursuant to O.C.G.A. § 48-8-1 et seq., as amended, unless the purchaser or lessee furnishes the supplier with a properly completed Certificate of Exemption (Form ST-5M), or a direct pay permit.

(c) Where a Certificate of Exemption (Form ST-5M), or direct pay permit has not been previously obtained and submitted, and tax is remitted on the purchase or lease of qualifying repair and replacement parts, the purchaser or lessee may apply to the Commissioner for a refund of such tax.

(d) Miscellaneous spare parts for which the ultimate use of the spare parts is unknown at the time of purchase are eligible for the exemption as repair or replacement parts. However, use tax must be accrued and remitted if spare parts are withdrawn from the inventory of spare parts and used for any purpose other than to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property.

(7) Special Requirements: Applications and Exemption Forms.

(a) New Manufacturing Plants:

1. Any purchaser or lessee of machinery or equipment that is necessary and integral to the manufacture of tangible personal property which will be used for the first time in a new manufacturing plant in this state, who desires to secure the benefit of the machinery and equipment exemption available pursuant to O.C.G.A. § 48-8-3(34)(B), must submit an Application for Certificate of Exemption (Form ST-M1) to the Commissioner. The application must include a schedule of machinery or equipment to be purchased or leased, a full description of the usage

of the machinery or equipment to be purchased or leased, and the approximate cost of each item of machinery or equipment. The Commissioner may require additional information, as necessary, in order to render a determination of the claim for exemption. These requirements are applicable to all purchasers and lessees, including holders of a direct pay permit issued under Ga. Comp. R. & Regs. 560-12-1-.16.

2. Upon approval of the application, the Commissioner will issue a Certificate of Exemption for Manufacturing Machinery and Equipment (Form ST-M2) for presentation by the purchaser or lessee to the supplier of qualifying machinery or equipment, whereupon the purchaser or lessee is relieved from the payment of the tax and the supplier of such machinery or equipment is relieved from collection of the tax.

(b) Existing Manufacturing Plants:

1. Any purchaser or lessee of machinery or equipment that will be used in an existing manufacturing plant as additional, replacement, or upgraded machinery or equipment that is necessary and integral to the manufacture of tangible personal property, who desires to secure the benefit of machinery and equipment exemptions available pursuant to O.C.G.A §§ 48-8-3(34)(A) or 48-8-3(34)(C), must furnish the supplier of machinery or equipment with a properly completed Certificate of Exemption Form ST-5M, or with a direct pay permit.

(i) Georgia Form ST-5M is a sales and use tax certificate of exemption designed specifically for Georgia manufacturers. A properly completed Georgia Form ST-5M will include the current date, name and address of the supplier, the purchaser's name, address, commodity code, certificate of registration number, and the signature and title of the owner, partner, or authorized official.

(ii) Eligible taxpayers who hold direct pay authority granted under Ga. Comp. R. & Regs. 560-12-1-.16 may furnish a supplier with their direct pay permit in lieu of, or in conjunction with, Forms ST-M2, or ST-5M.

(8) Effective Date: This rule shall be effective for transactions which occur on or after January 1, 2009.

Authority: O.C.G.A. §§ 48-2-12, 48-8-3(34), and 48-8-3(34.3)